

AMENDED IN ASSEMBLY APRIL 30, 2007

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1067

Introduced by Assembly Member Cook

February 23, 2007

An act to amend Sections 313, 313.1, and 313.4 of the Penal Code, relating to harmful matter.

LEGISLATIVE COUNSEL'S DIGEST

AB 1067, as amended, Cook. Harmful matter.

Existing law defines harmful matter and provides that any person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly sells, rents, distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, any harmful matter to a minor or who knowingly displays, sells, or offers to sell in any coin-operated vending machine that is not supervised by an adult and that is located in a public place, other than a public place from which minors are excluded, any harmful matter is punishable by a fine of not more than \$2,000, by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

This bill would provide that any person who owns a newsrack that is maintained in any public place or private business establishment, other than a place from which minors are excluded, displaying harmful matter who does not employ blinder racks, as specified, shall be punished by a fine not exceeding \$100 for a first offense, a fine not exceeding \$200 for a 2nd offense, or for a 3rd or subsequent violation, a fine not

exceeding \$1,000 or imprisonment in a county jail not to exceed 6 months, or by both that fine and imprisonment. This bill would make other conforming changes. Because this bill would create a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 313 of the Penal Code is amended to
2 read:

3 313. As used in this chapter:

4 (a) “Blinder racks” means any opaque item or device that rests
5 on or in front of harmful matter so that the lower two-thirds of the
6 matter is not exposed to view.

7 (b) “Business establishment” means any commercial enterprise
8 that distributes or exhibits harmful matter where it can be viewed
9 by members of the general public.

10 (c) “Distribute” means to transfer possession of, whether with
11 or without consideration.

12 (d) “Exhibit” means to show.

13 (e) “Harmful matter” means matter, taken as a whole, which to
14 the average person, applying contemporary statewide standards,
15 appeals to the prurient interest, and is matter which, taken as a
16 whole, depicts or describes in a patently offensive way sexual
17 conduct and which, taken as a whole, lacks serious literary, artistic,
18 political, or scientific value for minors.

19 (1) When it appears from the nature of the matter or the
20 circumstances of its dissemination, distribution or exhibition that
21 it is designed for clearly defined deviant sexual groups, the appeal
22 of the matter shall be judged with reference to its intended recipient
23 group.

24 (2) In prosecutions under this chapter, where circumstances of
25 production, presentation, sale, dissemination, distribution, or
26 publicity indicate that matter is being commercially exploited by

1 the defendant for the sake of its prurient appeal, that evidence is
2 probative with respect to the nature of the matter and can justify
3 the conclusion that the matter lacks serious literary, artistic,
4 political, or scientific value for minors.

5 (f) “Matter” means any book, magazine, newspaper, video
6 recording, or other printed or written material or any picture,
7 drawing, photograph, motion picture, or other pictorial
8 representation or any statue or other figure, or any recording,
9 transcription, or mechanical, chemical, or electrical reproduction
10 or any other articles, equipment, machines, or materials. “Matter”
11 also includes live or recorded telephone messages when
12 transmitted, disseminated, or distributed as part of a commercial
13 transaction.

14 (g) “Person” means any individual, partnership, firm,
15 association, corporation, limited liability company, or other legal
16 entity.

17 (h) “Knowingly” means being aware of the character of the
18 matter.

19 (i) “Minor” means any natural person under 18 years of age.

20 (j) “Newsrack” means any display that is located on public
21 property or in a private business establishment where the contents
22 can be viewed by members of the general public that contains
23 harmful matter for the purpose of distributing or exhibiting it.

24 SEC. 2. Section 313.1 of the Penal Code is amended to read:

25 313.1. (a) Every person who, with knowledge that a person is
26 a minor, or who fails to exercise reasonable care in ascertaining
27 the true age of a minor, knowingly sells, rents, distributes, sends,
28 causes to be sent, exhibits, or offers to distribute or exhibit by any
29 means, including, but not limited to, live or recorded telephone
30 messages, any harmful matter to the minor shall be punished as
31 specified in Section 313.4.

32 It does not constitute a violation of this section for a telephone
33 corporation, as defined by Section 234 of the Public Utilities Code,
34 to carry or transmit messages described in this chapter or to
35 perform related activities in providing telephone services.

36 (b) Every person who misrepresents himself or herself to be the
37 parent or guardian of a minor and thereby causes the minor to be
38 admitted to an exhibition of any harmful matter shall be punished
39 as specified in Section 313.4.

(c) (1) Any person who knowingly displays, sells, or offers to sell in any coin-operated or slug-operated vending machine or mechanically or electronically controlled vending machine that is located in a public place, other than a public place from which minors are excluded, any harmful matter displaying to the public view photographs or pictorial representations of the commission of any of the following acts shall be punished as specified in Section 313.4: sodomy, oral copulation, sexual intercourse, masturbation, bestiality, or a photograph of an exposed penis in an erect and turgid state.

(2) Any person who knowingly displays, sells, or offers to sell in any coin-operated vending machine that is not supervised by an adult and that is located in a public place, other than a public place from which minors are excluded, any harmful matter, as defined in subdivision (a) of Section 313, shall be punished as specified in Section 313.4.

(d) (1) Any person who owns a newsrack that is maintained in any public place or private business establishment, other than a place from which minors are excluded, displaying harmful matter who does not employ blinder racks shall be punished by a fine not exceeding one hundred dollars (\$100) for a first offense, a fine not exceeding two hundred dollars (\$200) for a second offense, or for a third or subsequent violation, a fine not exceeding one thousand dollars (\$1,000), ~~imprisonment in a county jail not to exceed six months, or by both that fine and imprisonment.~~

(2) This subdivision shall not apply to the display of materials that do not contain harmful matter on the front cover.

(e) Any person who sells or rents video recordings of harmful matter shall create an area within his or her business establishment for the placement of video recordings of harmful matter and for any material that advertises the sale or rental of these video recordings. This area shall be labeled “adults only.” The failure to create and label the area is an infraction, punishable by a fine not to exceed one hundred dollars (\$100). The failure to place a video recording or advertisement, regardless of its content, in this area shall not constitute an infraction. Any person who sells or distributes video recordings of harmful matter to others for resale purposes shall inform the purchaser of the requirements of this section. This subdivision shall not apply to public libraries as defined in Section 18710 of the Education Code.

1 (f) Any person who rents a video recording and alters the video
2 recording by adding harmful material, and who then returns the
3 video recording to a video rental store, shall be guilty of a
4 misdemeanor. It shall be a defense in any prosecution for a
5 violation of this subdivision that the video rental store failed to
6 post a sign, reasonably visible to all customers, delineating the
7 provisions of this subdivision.

8 (g) It shall be a defense in any prosecution for a violation of
9 subdivision (a) by a person who knowingly distributed any harmful
10 matter by the use of telephones or telephone facilities to any person
11 under the age of 18 years that the defendant has taken either of the
12 following measures to restrict access to the harmful matter by
13 persons under 18 years of age:

14 (1) Required the person receiving the harmful matter to use an
15 authorized access or identification code, as provided by the
16 information provider, before transmission of the harmful matter
17 begins, where the defendant previously has issued the code by
18 mailing it to the applicant after taking reasonable measures to
19 ascertain that the applicant was 18 years of age or older and has
20 established a procedure to immediately cancel the code of any
21 person after receiving notice, in writing or by telephone, that the
22 code has been lost, stolen, or used by persons under the age of 18
23 years or that the code is no longer desired.

24 (2) Required payment by credit card before transmission of the
25 matter.

26 (h) It shall be a defense in any prosecution for a violation of
27 paragraph (2) of subdivision (c) that the defendant has taken either
28 of the following measures to restrict access to the harmful matter
29 by persons under 18 years of age:

30 (1) Required the person receiving the harmful matter to use an
31 authorized access or identification card to the vending machine
32 after taking reasonable measures to ascertain that the applicant
33 was 18 years of age or older and has established a procedure to
34 immediately cancel the card of any person after receiving notice,
35 in writing or by telephone, that the code has been lost, stolen, or
36 used by persons under the age of 18 years or that the card is no
37 longer desired.

38 (2) Required the person receiving the harmful matter to use a
39 token in order to utilize the vending machine after taking

1 reasonable measures to ascertain that the person was 18 years of
2 age or older.

3 (i) Any list of applicants or recipients compiled or maintained
4 by an information-access service provider for purposes of
5 compliance with paragraph (1) of subdivision (g) is confidential
6 and shall not be sold or otherwise disseminated except upon order
7 of the court.

8 SEC. 3. Section 313.4 of the Penal Code is amended to read:

9 313.4. Every person who violates Section 313.1, other than
10 subdivision (d) or (e), is punishable by fine of not more than two
11 thousand dollars (\$2,000), by imprisonment in the county jail for
12 not more than one year, or by both that fine and imprisonment.
13 However, if the person has been previously convicted of a violation
14 of Section 313.1, other than subdivision (e), or of any section of
15 Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1
16 of this code, the person shall be punished by imprisonment in the
17 state prison.

18 SEC. 4. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.